Supreme Court, U.S.
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No. ____

In The
Supreme Court Of The United States
October Term, 1996

BENJAMIN CAMPFIELD,
Petitioner,

v.

STATE OF CONNECTICUT,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

PETITION FOR WRIT OF CERTIORARI WITH ATTACHED APPENDIX

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QUESTION PRESENTED FOR REVIEW

Is the Fourteenth Amendment's Due Process Clause violated by the refusal of Connecticut courts to examine whether out-of-court identification procedures were unnecessarily and impermissibly suggestive in assessing whether there was a very substantial likelihood of irreparable mis-identification where witnesses to a shooting had no more than 4 seconds to observe the assailant at midnight through the windshield of a car and where the petitioner, a black male, was subsequently detained by police for a 2:00 a.m. show-up on a street corner in a neighboring city while a police cruiser containing the victim-witnesess shined its high beams on the petitioner who was surrounded by uniformed police?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

BENJAMIN CAMPFIELD,

Petitioner

VS.

STATE OF CONNECTICUT,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

The Petitioner, Benjamin Campfield, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Connecticut Appellate Court in this case and the decision denying certification by the Connecticut Supreme Court.

I. OPINIONS BELOW

The defendant Benjamin Campfield was convicted after a jury trial in the Superior Court, Geographical Area 2 at Bridgeport before Judge Leonard Cocco on two counts of attempted murder in violation of General Statutes 53a-49 and 53a-54a(a) and two counts of attempted assault in the first degree in violation of General Statutes 53a-49 and 53a-59(a). Mr. Campfield was acquitted of two counts of reckless endangerment in the first degree under General Statutes 53a-63.

On May 12, 1992 the petitioner was sentenced. The petitioner received an effective sentence of 40 years suspended after 25 years imprisonment to serve with five years probation. The petitioner was at liberty on bond until April 30, 1997 when he surrendered to commence service of his sentence of imprisonment.

The trial judge denied petitioner's Motion to Suppress Identification Testimony on March 16, 1992. (App. 22-A). The Connecticut Appellate Court affirmed Benjamin Campfield's conviction on December 31, 1996; **State vs. Campfield**, 44 Conn. App. 6 (1996) (App. 1-A). A timely petition for certification to the Connecticut Supreme Court was denied on March 27, 1997; 240 Conn. 916 (App. 21-A).

II. JURISDICTIONAL STATEMENT

The petitioner seeks review of the Connecticut Appellate Court's ruling affirming the convictions of the petitioner and the Connecticut Supreme Court's denial of certification. This Court has jurisdiction to review the judgment by writ of certiorari pursuant to 28 U.S.C. 1257(a). Pursuant to Rule 13.1 this petition has been filed within 90 days of the denial of certification.

III. CONSTITUTIONAL PROVISION WHICH THE CASE INVOLVES

The petitioner relies upon the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment provides in relevant part... "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

IV. STATEMENT OF THE CASE AND FACTS MATERIAL TO THE CONSIDERATION OF THE PETITION FOR A WRIT OF CERTIORARI

Sometime after midnight April 11, 1991, Ivan Mikolic was operating a red Chevrolet Cavalier automobile in which Tracey O'Connor was the passenger sitting in the front seat next to him (App. 27-A). Another car was tailgating the Cavalier and flashing

its lights occasionally (App. 27-A, 28-A). Mikolic stopped his automobile in a driveway while the other car passed by quickly and then slowed down and turned into an intersecting street. The Cavalier then pulled up and stopped approximately 10 - 15 feet in front of the assailant's automobile. (App. 29-A, 30-A, 31-A).

Tracey O'Connor identified the color of the tailgating car as brown (App. 32-A, 33-A). Both Mikolic and O'Connor told the Trumbull Police that the tailgating car was an expensive looking car "like a jaguar" (App. 32-A). She could not see a license plate on the front part of the vehicle (App. 33-A). There were no interior lights on in the other vehicle. O'Connor didn't know whether the other vehicle's high beams were still on when that car was stopped; they were no longer blinking (App. 33-A).

She testified at the suppression hearing that she observed a black man around age 40 or 50 with glasses on (App. 33-A). She did not notice what clothing he was wearing (App. 33-A, 34-A, 36-A). She could not see his eyes behind the glasses, she just saw his glasses (App. 34-A). She described him as not very heavy, but heavier than average (App. 34-A).O'Connor testified that both she and the black man looked toward each other but did not speak. It "took a few seconds." (App. 34-A, 35-A). She then saw two yellow flashes as two shots went off (App. 35-A). Immediately, Mikolic pushed her down; she was too frightened to notice

whether the flash was moving or not. O'Connor was under the glove compartment in her car. It was 3 or 4 seconds in which she was able to observe the individual before the flashes started, and after she saw the flash, she ducked. (App. 36-A). She could see the other individual from his chest up. She didn't notice what he was wearing and did not know whether he was wearing a jacket or shirt. She had never seen this individual before (App. 36-A).

After the shots were fired, Mikolic drove off and both subsequently left their car and ran. They called the Trumbull police who detailed a female officer (Hamilton) to drive Mikolic and O'Connor to Bridgeport (App. 37-A). O'Connor and Mikolic were sitting in the back of a police cruiser when the officer told them "they had a suspect" (App. 37-A). It was more than an hour after the incident occurred that she was driven with Mikolic to Bridgeport by the Trumbull police (App. 37-A, 38-A). The incident had occurred shortly after midnight (App. 38-A).

When she arrived in Bridgeport, O'Connor and Mikolic were in the back seat of a police cruiser. She noticed a BMW and stated "there's the car" (App. 38-A). The BMW that she spotted at that time was not brown as she previously described it, but it was blue (App. 38-A, 39-A). She observed the petitioner leaning against a pole (App. 39-A). The pole was holding up the traffic light at the intersection.

There were police officers near the car in which she was sitting and near the petitioner (App. 39-A).

She could not testify how many police officers were standing around the petitioner (App. 40-A). She had previously been told "that he was the man that was apprehended that fit the I.D. we had given them and the car we had given them." (App. 40-A). She had been told that she was being taken to Bridgeport to view a suspect (App. 41-A).

When they arrived at Bridgeport after having been driven by the Trumbull Police, they sat in a cruiser, and the Trumbull police officer "shined the light on him" (App. 41-A). Police officers had walked up to the cruiser in which the witnesses were sitting, spoke to them for a period of time, the officers then walked away from the outside of the cruiser, and as the Trumbull police officer pulled her cruiser containing the witnesses closer, she shined her light on the petitioner (App. 41-A). O'Connor identified the petitioner. Mikolic asked that a hat be removed from the petitioner's head at which point he then identified the same individual whom he had heard O'Connor identify in his presence (App. 42-A).

Both O'Connor and Mikolic were shown only the petitioner leaning against the pole surrounded by police at 2:00 a.m. in the morning in Bridgeport, Connecticut on a street corner. She observed the man for 3 - 4

seconds at the time of the incident in the dark, through the windshield of her car (App. 42-A). When she was driven to Bridgeport for the show-up, there were police officers standing around the petitioner at the time, and the only light shining on him was the light that came either from the street or the light on the police car in which she was situated (App. 42-A).

O'Connor was unable to say what the assailant was wearing at the time of the incident, and no other possible suspects were shown either to O'Connor or Mikolic (App. 42-A). O'Connor noticed no other black males other than the petitioner at the time of the show-up (App. 43-A).

On cross-examination, the prosecutor asked "you looked at his face. Isn't that a fair statement?" and Tracey O'Connor answered "I -- I guess I looked" (App. 43-A). Under cross-examination by the prosecutor, O'Connor stated "she [the Trumbull police officer] said that we were going to drive up wherever they had the suspect and she would shine the light on him -- on the suspect and I asked her if he could see us and she said, "no, he won't be able to see you, but you'll be able to identify him.'" (App. 44-A).

Mikolic's identification of the automobile as a BMW was based upon four round headlights (App. 44-A). Mikolic was approximately 12 feet from the assailant's face at midnight (App. 44-A). Mikolic testified that his

opportunity to observe was approximately four seconds and that the assailant made no attempt to talk to him (App. 45-A). He then saw the man shoot at him with the gun. Mikolic saw the flash, but neither he nor the passenger Tracey O'Connor were struck (App. 46-A). Mikolic testified that there were 5 shots fired (App. 46-A).

Mikolic also identified the blue BMW in Bridgeport as the auto that had been driven by the assailant, even though the BMW was not the same color [brown] as the car that Mikolic had previously described to the police (App. 32-A, 33-A), and it was not a Jaguar as he and O'Connor had previously told the police (App. 32-A). Both his and O'Connor's previous descriptions were that the car was brown, and this BMW in Bridgeport driven by the petitioner was blue. It had Georgia license plates. Mikolic could not describe the clothing of the assailant (App. 44-A, 45-A).

Officer Susan Hamilton of the Trumbull Police drove O'Connor and Mikolic to Bridgeport, Connecticut for the purpose of making an identification (App. 47-A). The location was the intersection of Hollister Street and Stratford Avenue. There is no question that she told the two victims that they were being driven to see if they could make an identification of the suspect (App. 47-A). Officer Hamilton left Tracey O'Connor's house to go to Bridgeport at approximately 1:30 a.m. on April 10 and arrived at the location in Bridgeport at approximately 2:10

a.m. (App. 48-A). Statements were subsequently completed by the victims at the Trumbull Police headquarters (App. 48-A).

Officer Hamilton conceded that both victims had told her the car was an expensive looking car like a Jaguar (App. 48-A). After the shooting, a BMW then passed a Trumbull police officer on Stonehouse Road in Trumbull near the scene of the incident (App. 48-A, 49-A). The BMW was stopped by the Trumbull Police, and had Connecticut plates (App. 48-A, 49-A). It was a dark BMW with a lone male occupant. (App. 49-A).

The victims never told the police that the assailant drove a BMW with Georgia plates (App. 49-A). Officer Hamilton testified that at the time of the show-up there was the petitioner and two to four uniformed officers (App. 50-A, 51-A) in the glare of her headlights. Officer Hamilton testified that the only person who was not a police officer standing in the glare of her headlights at the show-up was the petitioner Benjamin Campfield (App. 50-A, 51-A).

There were no injuries to the victims. There was no necessity for either one of them to receive medical attention (App. 51-A). There was no medical emergency at the time of the investigation (App. 52-A). The petitioner's freedom had been restricted (Tr. 52-A). There was no reason why Campfield could not have been taken to Bridgeport Police

Headquarters or Trumbull Police Headquarters and placed in a line-up. (App. 52-A). There was no physical or other reason why either of the victims or the petitioner could not have participated in a line-up (App. 52-A, 53-A). There was no line-up (App. 53-A). Officer Hamilton testified that her cruiser was approximately 25 feet away from the petitioner during this show-up (App. 53-A, 54-A).

Judge Cocco denied the motion to suppress out of court and in court identification testimony of Tracey O'Connor and Ivan Mikolic (App. 22-A).

V. REASONS FOR GRANTING THE WRIT

The petitioner, a 60 year old black male at the time of sentencing, was convicted and sentenced to 25 years imprisonment on the uncorroborated testimony of two eye witnesses who based their identifications of the assailant on an observation which lasted not more than four seconds while they were seated in an automobile shortly after midnight on a dark road in Trumbull, Connecticut. Approximately two hours later, these two individuals were taken by Trumbull police to the neighboring city of Bridgeport where the petitioner was detained on a street corner by white uniformed police.

The victims were told by a Trumbull police officer that they were being taken to Bridgeport to identify a suspect who had been apprehended, and when the police cruiser containing the

two victims arrived at the corner of Hollister Street and Stratford Avenue, the police cruiser shined its high beams on the petitioner. There was no line-up, and there was no excuse for not having a line-up. The petitioner was the only black man on the street corner, and he was surrounded by uniformed police.

The victims had previously described the automobile driven by their assailant as brown in color and expensive like a Jaguar. The BMW driven by the petitioner at 2:00 a.m. in Bridgeport, Connecticut was blue with Georgia plates which had not been observed by the victims.

Because Connecticut's test for admissibility of eye witness identification testimony, as set forth in **State vs. Figueroa**, 235 Conn. 145, 665 2.Ad 63 (1995) and **State vs. Campfield**, 44 Conn. App. 6 (1996), certification denied, 240 Conn. 916 (1997). (App. 1-A) dispenses with the requirement that the trial court examine whether an out-of-court identification procedure was impermissibly or unnecessarily suggestive, it clearly conflicts with the Second Circuit's two pronged test for admissibility set forth in **United States vs. Tortora**, 30 F.3d 334 (2nd Cir. 1994); **United States vs. Concepcion**, 983 F.2d 369 (2nd Cir. 1992); cert denied, sub. nom. **Frias vs. United States**, 510 U.S. 856, 114 S.Ct. 163 (1993) and **United States vs. Maldonado-Rivera**, 922 F.2d 934, 973 (2nd Cir. 1990) and controlling Supreme

Court precedent in **Manson vs. Brathwaite**, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d. 140 (1977) and **Neil vs. Biggers**, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d. 401 (1972); therefore the writ of certiorari should issue.

A. THE CONNECTICUT RULE AS EMBODIED IN FIGUEROA AND CAMPFIELD CONFLICTS WITH DECISIONS OF THE SUPREME COURT AND THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT WHICH REQUIRE A TWO STEP ANALYSIS, THE FIRST STEP OF WHICH IS AN EXAMINATION OF WHETHER POLICE USED UNNECESSARY AND IMPERMISSIBLY SUGGESTIVE OUT-OF-COURT IDENTIFICATION TECHNIQUES.

In **State vs. Campfield**, 44 Conn. App. 6 at 12 (1996), the Connecticut Appellate Court specifically chose to disregard the first prong of what had been a universally recognized federal constitutional requirement that before admission of identification testimony could be granted, the due process clause required a two pronged analysis, the first of which was "whether the identification procedure was unduly suggestive, and if so, whether a subsequent in-court identification would be the product of the suggestive procedures or whether instead it was independently reliable. **United States vs. Tortora**, 30 F.3d 334, 338 (2nd Cir. 1994); **United States vs. Concepcion**, **supra**, 983 F.2d 369, 377 (2nd Cir. 1992).

Instead, in **Campfield**, the Connecticut Appellate Court employed essentially circular reasoning when it held "because our determination that the identifications were reliable would obviate the need to determine whether they were 'unnecessarily suggestive'; see [**State vs. Figueroa**, 235 Conn. 145, 155-56, 665 A.2d 63 (1995)]; we address the reliability issue first." The Appellate Court then expressly obviates the need to examine the suggestiveness of the out-of-court identification procedure in its actual holding:

> We conclude that the out-of-court identification was reliable under the totality of the circumstances. We, therefore, need not consider whether the victims' identification was unnecessarily suggestive. **State vs. Figueroa**, **supra**, 235 Conn. 157. The defendant's right to due process was not violated by the admission of the out-of-court identification. By extension, the defendant's right to due process was not violated by the in-court identification because the in-court identification could not have been tainted by an out-of-court identification that was, itself, proper.

The Connecticut Appellate Court clearly misconceives the rule which has existed in this country since 1967 when the Supreme Court decided **Stovall vs. Denno**, 388 U.S. 293, 87 S.Ct. 1967,

1972, 18 L.Ed.2d 1119 (1967) wherein the Supreme Court recognized that "[t]he practice of showing suspects singly to persons for the purpose of identification, and not as part of a line-up, has been widely condemned." **Stovall vs. Denno**, 388 U.S. at 302, 87 S.Ct. at 1972; **United States vs. Concepcion**, **supra**, 983 F.2d 369 at 377.

The state of constitutional law specifically relating to the issue of eye witness identification in Connecticut is a clear departure from settled constitutional principles which have been articulated time and time again by both the Supreme Court and the United States Courts of Appeals. For example, the trial judge showed a fundamental lack of understanding of the constitutional test. In his ruling denying the petitioner's motion to suppress identification testimony, the trial judge stated the following:

> But even if it were impermissibly and or unnecessarily suggestive as to give rise to a very substantial likelihood of irreparable misidentification, the Court will then examine the factors effecting the likelihood of mis-identification...

The trial court's articulation of the constitutional standard shows a fundamental lack of understanding of the evil against which there is constitutional due process protection. The risk is "a very substantial likelihood of irreparable mis-

identification." **Simmons vs. United States**, supra, 390 U.S. 377, 384, 88 S.Ct. 967, 971, 19 L.Ed.2d 1247 (1968); accord **Neil vs. Biggers**, 409 U.S. 188, 198, 93 S.Ct. 375, 381-82, 34 L.Ed.2d 401 (1972); see also, **Manson vs. Brathwaite**, 432 U.S. 98, 106 n.9, 114, 97 S.Ct. 2243, 2249 n.9, 2253, 53 L.Ed.2d 140 (1977); **United States vs. Concepcion**, supra, 983 F.2d at 377.

B. THERE WAS A VERY SUBSTANTIAL LIKELIHOOD OF IRREPARABLE MIS-IDENTIFICATION.

In fact, there was not only a very substantial likelihood of mis-identification in this case, but the likelihood was created by a gratuitous and impermissibly suggestive showup where police had advised the two victims that they had apprehended a suspect and then conducted a show-up with the suspect leaning up against a traffic light pole surrounded by uniformed police on a street corner in Bridgeport, Connecticut. The likelihood of the mis-identification being irreparable was manifest, because the police had reinforced the fact in the victims' awareness that the police had apprehended the man who shot at them.

One could not conceive of an identification procedure which was more suggestive. The petitioner was the only black man in civilian clothes surrounded by uniformed police at 2:00 a.m. in the morning. Neither victim had been wounded, and there was no

medical imperative to justify conducting this egregious show-up.

The police had detained the petitioner while he was driving a blue BMW, when the victims had previously identified the automobile from which shots had been fired as a brown Jaguar automobile. Their testimony was essentially uncorroborated, and there was no weapon found on the petitioner.

In assessing the factors to be considered in determining reliability under **Neil vs. Biggers**, supra, 409 U.S. 188, 199-200, 93 S.Ct. 375, 382-83, 34 L.Ed.2d 401 (1972), the victims' out-of-court and in-court identifications were unreliable. The opportunity to view the assailant according to each witness' testimony could not have been more than 4 seconds. While both testified that they looked at the assailant's face, they were looking from a distance of approximately 12 - 15 feet through a windshield into the interior of another automobile with no interior lighting. Both witnesses described the automobile driven by the assailant as brown, not blue, and as a Jaguar, not a BMW. The petitioner drove a blue BMW when he was stopped at 2:00 a.m. in the morning in the neighboring city of Bridgeport.

Neither witness could describe the clothing worn by the assailant, and both described him as an older black male who was heavier than average. It is not possible to assess the level of certainty demonstrated by the witnesses, precisely because the out-

of-court show-up was so gratuitously and impermissibly suggestive that it gave rise to an overwhelming risk of mis-identification which was irreparable. They were told by police that the suspect had been apprehended. The suspect was surrounded by uniformed police at the time of the show-up, and he was the only black male the victims were called upon to identify. There was no reason offered by the State for its failure to make any attempt to conduct a lineup of individuals fitting the description of the assailant.

When the trial judge articulated the test that he was following, it does not appear from the record that he had any idea of the import of what he was saying when he stated:

> But even if it were impermissibly and/or unnecessarily suggestive as to give rise to a very substantial likelihood of irreparable mis-identification, the Court will then examine the factors effecting the likelihood of mis-identification.

(App. 25-A).

The reason the Supreme Court and every Court of Appeals in this country have adopted the two-pronged constitutional test is precisely to determine the question which the trial court assumed, that is, whether as a result of unnecessary and impermissibly suggestive out-of-court identification procedures, there exists a substantial likelihood of irreparable mis-

identification. There was simply no other evidence in this case to corroborate the eye witness identifications of Tracy O'Connor and Ivan Mikolic.

The trial judge's confusion over just what he was to analyze, was in great measure due to Connecticut's departure from established constitutional law. Connecticut has embarked upon a departure from established constitutional principles which is unjustified and for which there is no compelling necessity. Where the opportunity to observe an assailant is no more than 4 seconds at midnight in the absence of interior automobile lighting under circumstances of tremendous stress, no Court should ignore the impact and the irreparable damage that can be, and in this case was, done to influence witnesses who were brought to a street corner in a neighboring city to view a black man surrounded by uniformed police where the victims had been told by the police that the suspect had been detained.

The constitutional requirement that courts analyze first whether pretrial identification procedures were impermissibly and unnecessarily suggestive is a rule which goes to the heart of the guilt determining process. This is no esoteric principle, but it is rather the heart and soul of so many criminal cases tried in this nation. Benjamin Campfield was sentenced to 25 years imprisonment with no prior record. His conviction was based upon eye witness testimony which was the

product of unnecessary and impermissibly suggestive identification procedures conducted by the police.

It is respectfully submitted that Connecticut's refusal to focus on the suggestiveness of the pretrial show-up in this case as embodied in the **Figueroa-Campfield** rule, presents a direct conflict with the decisions of the Supreme Court and of the United States Court of Appeals for the Second Circuit. Therefore, petitioner prays that this Court grant his petition for a writ of certiorari.

Respectfully submitted,
THE PETITIONER,
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STATE OF CONNECTICUT *v.* BENJAMIN CAMPFIELD
(11386)

Landau, Heiman and Daly, Js.

Convicted of the crimes of attempted murder and attempted assault in the first degree, the defendant appealed to this court. *Held:*

1. The defendant could not prevail on his unpreserved challenge to the admission of certain identification testimony, he having failed to establish that a constitutional violation clearly existed; the challenged out-of-court identification was reliable under the totality of circumstances, and the challenged in-court identification was therefore not tainted.
2. The defendant's unpreserved challenge to the warrantless search of his automobile was unavailing; he search of the glove compartment of the defendant's vehicle was a valid search incident o a lawful arrest.
3. The trial court properly admitted into evidence the defendant's refusal to submit to an atomic absorption test for the presence of gunpowder residue; the evidence did not establish that the defendant had requested the assistance of counsel before refusing the test and the test did not involve communication or testimony and therefore did not violate the right to remain silent or the right to due process.
4. The defendant's claim that the trial court's jury instruction improperly permitted the jury to render inconsistent jury verdicts was unavailing; the defendant could have simultaneously possessed the intent to cause death and the intent to cause serious physical injury.
5. The defendant could not prevail on his unpreserved claim that his sentencing for the crimes of attempted murder and attempted assault in the first degree violated the constitutional prohibitions against double jeopardy; each crime requires proof of an element that the other does not.
6. The evidence presented that the defendant fired a gun directly at the victims and the inferences that could reasonably be drawn from that evidence was sufficient to allow the jury to conclude beyond a reasonable doubt that the defendant possessed the requisite intent for conviction of the crimes charged.
7. The trial court's jury instruction concerning the elements of criminal attempt provided guidance for a proper verdict.

Argued September 17—officially released December 31, 1996

Substitute information charging the defendant with two counts each of the crimes of attempt to commit murder, attempt to commit assault in the first degree and reckless endangerment in the first degree, brought to the Superior Court in the judicial district of Fairfield, geographical area number two, and tried to the jury before *Cocco, J.*; verdict and judgment of guilty of two counts of attempt to commit murder and two counts of attempt to commit assault in the first degree, from which the defendant appealed to this court. *Affirmed.*

Erskine D. McIntosh, for the appellant (defendant).

James M. Ralls, assistant state's attorney, with whom, on the brief, were *Donald Browne*, state's attorney, and *Cornelius Kelly*, assistant state's attorney, for the appellee (state).

DALY, J. The defendant appeals from the judgment of conviction, after a jury trial, of two counts of attempted murder in violation of General Statutes §§ 53a-49 and 53a-54a (a) and two counts of attempted assault in the first degree in violation of General Statutes §§ 53a-49 and 53a-59 (a).[1] The defendant claims that (1) certain prearrest and trial identification procedures violated his right to due process, (2) the warrantless search of his automobile violated his right to be free from unreasonable searches, (3) the admission into evidence of his refusal to submit to a gun powder residue test violated his rights to counsel, to due process and against self-incrimination, (4) the trial court improperly instructed the jury that one can simultaneously possess the intent to cause death and the intent to cause serious physical injury, (5) the judgments of conviction of attempted murder and attempted assault in the first degree violated the guarantee against double jeopardy, (6) the jury verdicts were not supported by sufficient

[1] The jury found the defendant not guilty of two counts of reckless endangerment in the first degree under General Statutes § 53a-63.

evidence, and (7) the trial court improperly denied his request to instruct the jury regarding the definition of "planned" as it is used in § 53a-49. We affirm the judgment of the trial court.

The following facts are relevant to this appeal. At approximately midnight on April 10, 1991, Trumbull police officer Kevin Hammel saw a dark colored BMW with Georgia license plates turn onto Main Street and proceed north. The automobile rapidly accelerated and Hammel, traveling behind it, tracked its speed with the radar in the police vehicle. Before Hammel could activate his overhead lights or siren, the driver of the BMW pulled over and stopped. As Hammel approached the BMW, he noted that it appeared to be brown or dark in color. Hammel asked the driver for his operator's license, registration and insurance identification card. Because the driver did not have his license in his possession, Hammel wrote the driver's date of birth on the insurance card and radioed police headquarters and ascertained that the driver had a valid Connecticut operator's license. Hammel gave the driver an oral warning and released him.

Shortly after midnight, Ivan Mikolic was driving with a passenger, Tracey O'Connor, in his automobile on Stonehouse Drive in Trumbull. Mikolic and O'Connor noticed that an automobile with four round headlights was closely following them and occasionally flashing its high beams. Mikolic recognized the automobile as a BMW. Mikolic turned into a driveway to allow the BMW to pass. After passing Mikolic's vehicle, the BMW made a U-turn toward Mikolic's vehicle and stopped, while Mikolic pulled back out of the driveway to proceed in the direction he and O'Connor had been driving. Thinking that the driver of the BMW needed help, Mikolic drove to within a short distance of it and parked at an angle so that his headlights illuminated both the automobile and its driver. The defendant was the driver

of the BMW, which was dark in color and appeared to be brown. After several seconds, the defendant pointed a gun and fired five shots at Mikolic and O'Connor. Bullets entered the hood, the left front tire, mud flap, fender and driver's side door, and shattered the driver's side window. Mikolic and O'Connor ducked and drove away, and the defendant drove away in the opposite direction. Mikolic and O'Connor abandoned Mikolic's vehicle because of the flat left front tire. They ran to O'Connor's house and called the police.

Hammel and other police officers subsequently arrived at O'Connor's house and spoke with Mikolic and O'Connor. Hammel noted the similarities between Mikolic's description of the driver and the automobile involved in the shooting and the driver and BMW he had stopped earlier that evening on Main Street in Trumbull. On the basis of those similar descriptions, the Trumbull police staked out the defendant's house about a quarter mile from the shooting incident and notified the surrounding towns' police departments about the incident so that they could assist in locating the defendant. A short time later, at approximately 2 a.m., the defendant and his automobile were found by the Bridgeport police at the intersection of Hollister and Stratford Avenues. Hammel went to the scene and identified the defendant as the driver he had stopped earlier. He then removed the insurance identification card from the glove compartment, saw the driver's date of birth that he had written on the card at the earlier traffic stop and noticed that the car appeared to be blue.

Officer Susan Hamilton of the Trumbull police department drove Mikolic and O'Connor to Bridgeport to view the defendant. As they approached the location where the police were holding the defendant, Mikolic and O'Connor recognized the defendant's car, although it now appeared to them to be blue. Hamilton then turned the police vehicle's lights toward a group of police offi-

cers and others. Mikolic and O'Connor identified the defendant as the man who had shot at them earlier. The defendant later admitted that he owned a .38 caliber revolver, but claimed that he had last seen it several days before at his residence. At trial, Mikolic and O'Connor again identified the defendant as the individual who had shot at them on the evening in question.

I

The defendant first asserts that the admission of the out-of-court and in-court identifications of him by Mikolic and O'Connor violated his due process rights under article first, §§ 8 and 9, of the Connecticut constitution. After a full evidentiary hearing, the trial court denied the defendant's motion to suppress the out-of-court identification pursuant to the fifth and fourteenth amendments to the federal constitution. The defendant now claims that the out-of-court identification tainted the in-court identification and that the admission of both identifications violated the Connecticut constitution. Because these claims are raised for the first time on appeal, the defendant seeks review pursuant to *State* v. *Golding*, 213 Conn. 233, 239, 567 A.2d 823 (1989).

A party can prevail on a claim not adequately presented at trial only if all of the following conditions are met: "(1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation clearly exists and clearly deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt." Id., 239. "Under *Golding* . . . this court is free to respond to the defendant's claim by focusing on whichever condition is most relevant in the particular circumstances. . . ." (Citations omitted; internal quotation marks omitted).

State v. *Pratt*, 235 Conn. 595, 603, 669 A.2d 562 (1995). We, therefore, focus here on the third prong of *Golding*, i.e., whether the alleged constitutional violation clearly exists and, if so, whether it clearly deprived the defendant of a fair trial. We conclude that the defendant cannot prevail on this claim because a constitutional violation does not clearly exist.

In reviewing a trial court's decision to admit evidence of identification, "[w]e will reverse the trial court's ruling . . . only where there is abuse of discretion or where an injustice has occurred . . . and we will indulge in every reasonable presumption in favor of the trial court's ruling. . . . Because the issue of the reliability of an identification involves the constitutional rights of an accused, [however] we are obliged to examine the record scrupulously to determine whether the facts found [by the trial court] are adequately supported by the evidence and whether the court's ultimate inference of reliability was reasonable." (Citation omitted; internal quotation marks omitted.) *State* v. *Figueroa*, 235 Conn. 145, 155, 665 A.2d 63 (1995). We inquire "whether the identification procedure was unnecessarily suggestive . . . and if . . . so, whether the identification was nevertheless reliable based on an examination of the totality of the circumstances." (Internal quotation marks omitted.) Id., 155–56. "[R]eliability is the linchpin in determining the admissibility of identification testimony . . . ." (Internal quotation marks omitted.) Id., 157, quoting *Manson* v. *Brathwaite*, 432 U.S. 98, 114, 97 S. Ct. 2243, 53 L. Ed. 2d 140 (1977).

To prevail on this claim, the defendant must establish that the identification was both unnecessarily suggestive and unreliable under the totality of the circumstances. *State* v. *Figueroa*, supra, 235 Conn. 155–56. Because our determination that the identifications were reliable would obviate the need to determine whether

they were "unnecessarily suggestive"; see id.; we address the reliability issue first.

The trial court determined that the out-of-court identification was neither unnecessarily suggestive nor unreliable under the totality of the circumstances. In reviewing that determination, we consider the following factors: the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation. See *State* v. *Mitchell*, 204 Conn. 187, 202, 527 A.2d 1168, cert. denied, 484 U.S. 927, 108 S. Ct. 293, 98 L. Ed. 2d 252 (1987).

As the trial court noted, the victims saw their assailant, who was visible in their automobile headlights, the victims testified that they looked at the face of their assailant to determine if they knew him or if he needed assistance, their description of their assailant to the police was consistent with the defendant's appearance at the out-of-court identification, the victims displayed a high level of certainty that the defendant was their assailant, and the time between the shooting and the confrontation was only approximately two hours. We conclude that the out-of-court identification was reliable under the totality of the circumstances. We, therefore, need not consider whether the victims' identification was unnecessarily suggestive. *State* v. *Figueroa*, supra, 235 Conn. 157. The defendant's right to due process was not violated by the admission of the out-of-court identification. By extension, the defendant's right to due process was not violated by the in-court identification because the in-court identification could not have been tainted by an out-of-court identification that was, itself, proper. We conclude that a violation of a constitutional right did not clearly exist.

The defendant has failed to satisfy the third prong of *Golding*.

II

The defendant next claims that the warrantless search of his automobile violated article first, § 7, of the Connecticut constitution. Because he did not raise this issue in the trial court, the defendant again seeks review under *State* v. *Golding*, supra, 213 Conn. 233. The state maintains that this claim is not reviewable because the trial court made no factual findings that would satisfy the first prong of *Golding*.

We first consider whether the record is adequate for review. Under *Golding*, a conclusion of law can properly be made by an appellate court even if the trial court was never asked to make, and never made, such a determination, as long as the factual record is adequate to provide the basis for such a conclusion. *State* v. *Torres*, 230 Conn. 372, 379, 645 A.2d 529 (1994). In the present case, Hammel testified that when he arrived in Bridgeport on the evening in question, he observed the defendant in custody in the back seat of a Bridgeport police car. The defendant's car was empty and bore the same license plates as the vehicle he had stopped in Trumbull earlier that evening. Hammel testified that because the color of the automobile now appeared different from the color it had appeared to be during the earlier stop, he reached into the glove compartment to ascertain whether the insurance card on which he had written the driver's date of birth during the earlier stop was present. He determined that it was. On the basis of that testimony, we conclude that the trial court record in this case contains the factual basis for appellate consideration of the defendant's claim.

We next consider whether the alleged constitutional violation clearly exists and clearly deprived the defendant of a fair trial. In *State* v. *Badgett*, 200 Conn. 412,

512 A.2d 160, cert. denied, 479 U.S. 940, 107 S. Ct. 423, 93 L. Ed. 2d 373 (1986), our Supreme Court held that where a defendant is restrained as a result of a lawful custodial arrest and has remained at the scene of the arrest, his vehicle may be searched incident to the arrest. Id., 424, citing *New York* v. *Belton*, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981). *Badgett* raised no state constitutional claim. In *State* v. *Delossantos*, 211 Conn. 258, 266–67, 559 A.2d 164, cert. denied, 493 U.S. 866, 110 S. Ct. 188, 107 L. Ed. 2d 142 (1989), we held, pursuant to article first, § 7, of the Connecticut constitution that when police officers make a lawful custodial arrest of an occupant of an automobile, and the arrestee is detained at the scene, the police may contemporaneously search the interior compartment of the automobile without a warrant. See also *State* v. *Waller*, 223 Conn. 283, 290, 612 A.2d 1189 (1992). For that purpose, the passenger compartment encompasses all the space reachable without exiting the vehicle. *State* v. *Delossantos*, supra, 267. Such a search is a valid search incident to an arrest without consideration of whether there is probable cause to believe that the motor vehicle contained contraband or evidence pertaining to a crime. Id. Hammel's warrantless search of the glove compartment in the present case was, therefore, permissible.

Moreover, even if the search had been improper, it did not clearly deprive the defendant of a fair trial because there was ample other evidence that the defendant was the same driver of a dark colored BMW whom Hammel had stopped earlier in the evening. Hammel recognized the defendant as the driver of the BMW that he had stopped in Trumbull earlier, the automobile had the same Georgia license plates, relatively little time had passed since the earlier stop, and the earlier stop had occurred in close proximity to the location where the defendant was taken into custody. Thus, the

action did not clearly deprive the defendant of a fair trial. See *State* v. *Golding*, supra, 213 Conn. 233. Because the defendant has failed to satisfy the third prong of *Golding*, he cannot prevail on this claim.

III

The defendant next asserts that the trial court improperly admitted into evidence his refusal to take the atomic absorption test (AAT).[2] Specifically, the defendant claims that the admission of that evidence violated his constitutional rights (1) to counsel, in violation of the sixth amendment to the United States constitution and article first, § 8, of the Connecticut constitution; (2) to due process, in violation of article first, §§ 8 and 9, of the Connecticut constitution; and (3) against self-incrimination, in violation of article first, § 8, of the Connecticut constitution. These claims were not raised at trial and are raised for the first time on appeal under *State* v. *Golding*, supra, 213 Conn. 233. We conclude that the defendant's claims fail to satisfy the third prong of *Golding*.

A

The defendant argues, for the first time on appeal, that the admission into evidence of his refusal to submit to the AAT violated his right to counsel under the sixth amendment to the United States constitution and article first, § 8, of the Connecticut constitution.

He claims that he was twice advised of his *Miranda* rights prior to his arrival at the Trumbull police station, and that, upon his arrival there, he stated that he wanted to speak with an attorney. He further claims that he was subsequently asked to submit to an AAT and that he refused. The state argues that the record fails to show that any request was made of the defendant to

[2] The atomic absorption test is designed to detect the presence of gunpowder residue.

take the AAT after a request for counsel was made, if such a request was ever made. It claims that his "right to silence" was respected and that there is no indication in the record that he ever invoked his right to counsel.

It is axiomatic that the questioning of a suspect must cease once a clear request for counsel has been made. *State* v. *Stoddard*, 206 Conn. 157, 166, 537 A.2d 446 (1988). In this case, however, Hammel testified that the defendant never invoked his right to speak to an attorney and that all questioning stopped when he refused to answer further questions. The credibility of a witness is a matter for the trial court. *Habura* v. *Kochanowicz*, 40 Conn. App. 590, 594, 672 A.2d 512 (1996). We conclude that the third prong of *State* v. *Golding*, supra, 213 Conn. 233, is not satisfied because no constitutional violation clearly existed.

B

The defendant next claims that his refusal to submit to the AAT should have been excluded because it violated his privilege against self-incrimination under article first, § 8, of the Connecticut constitution.

"[C]ompulsion which makes a suspect or accused the source of real or physical evidence does not violate a person's constitutional rights as it is not such as compels communications or testimony." (Internal quotation marks omitted.) *State* v. *Chesney*, 166 Conn. 630, 640, 353 A.2d 783, cert. denied, 419 U. S. 1004, 95 S. Ct. 324, 42 L. Ed. 2d 280 (1974). Thus, our Supreme Court has held that the taking of paraffin tests does not violate the fourth and fifth amendments because "[i]n the taking of paraffin tests . . . [t]here is no testimonial compulsion either directly, as in confession, or indirectly, as in polygraph tests. Consequently, applying the paraffin casts to the accused's hands [does] not violate the fourth and fifth amendments any more than fingerprinting." (Internal quotation marks omitted.) Id., 640, quot-

ing *State* v. *Chin Lung*, 106 Conn. 701, 723, 139 A. 91 (1927). Similarly, the involuntary taking of an AAT involves no testimonial compulsion either directly, as in a confession, or indirectly, as in a polygraph test. See *State* v. *Chesney*, supra, 640.

We conclude that because the AAT does not involve communications or testimony, the request that a defendant submit to such a test does not constitute questioning and the refusal to submit to the AAT does not constitute the invocation of the right to remain silent. Thus, the admission of the defendant's refusal to submit to the AAT did not violate article first, § 8, of the Connecticut constitution.

C

The defendant also claims that the admission of his refusal to submit to the AAT violated his right to due process because it was used as an indication of silence in the face of accusation. Again, because such a test does not involve testimony or communications, the refusal to submit to it does not constitute invocation of the right to remain silent, and admission of the evidence of such refusal does not constitute commentary on a defendant's choice to remain silent. The claim does not rise to the level of a constitutional violation, and the third prong of *Golding* is therefore not satisfied.

Moreover, even if the defendant's claims regarding the admission into evidence of the defendant's refusal to submit to the AAT had been of constitutional magnitude, the admission of such testimony was harmless because the trial court failed to give the jury the charge requested by the state, that such evidence could be used to infer consciousness of guilt. The third prong of *Golding* is not satisfied, and the claim is, therefore, not entitled to further review.

IV

The defendant next claims that the trial court's instruction improperly permitted the jury to render inconsistent guilty verdicts[3] on the counts of attempted murder under §§ 53a-49 and 53a-54a and attempted assault in the first degree under §§ 53a-49 and 53a-59. The defendant relies on this court's decision in *State* v. *Williams*, 39 Conn. App. 18, 663 A.2d 436 (1995), for the proposition that one cannot simultaneously possess the intent to cause death and the intent to cause serious physical injury. That decision, however, was recently reversed by our Supreme Court; *State* v. *Williams*, 237 Conn. 748, 679 A.2d 920 (1996); and is dispositive of this issue.

The Supreme Court determined that, although "§§ 53a-54a and 53a-59 (a) (1) require the same mental state, namely a specific intent . . . the particular intents required to violate these statutes are not the same. For each intent, a distinct conscious objective is sought. . . . We conclude that, under the appropriate circumstances, a defendant can simultaneously intend to cause the death of, and intend to cause serious physical injury to, the same victim." (Citation omitted.) Id., 754–57. The defendant attempted, at oral argument, to distinguish *Williams* from his own case by pointing out that in *Williams*, the defendant was convicted of assault in the first degree, whereas here, the defendant was convicted of *attempted* assault in the first degree. This is a distinction without consequence. The Supreme Court's analysis in *Williams* is confined to the mental states that §§ 53a-54a and 53a-59 (a) (1) require. Pursuant to § 53a-49 (a), a person is guilty of an attempt to

[3] Verdicts are legally inconsistent if "the existence of the essential elements for one offense negates the existence of the essential elements for another offense of which the defendant also stands convicted." *State* v. *Hinton*, 227 Conn. 301, 313, 630 A.2d 593 (1993); *State* v. *King*, 216 Conn. 585, 594–95, 583 A.2d 896 (1990), on appeal after remand, 218 Conn. 747, 591 A.2d 813 (1991).

commit a crime if he or she acts with the same "*kind of mental state required for the commission of the crime . . . .*" (Emphasis added.) The intent required, therefore, to commit an assault in the first degree must be the same as the intent required to commit attempted assault in the first degree. Whether one has that intent in no way alters the intent to violate the assault statute. We conclude, therefore, that because the defendant could have possessed both intents simultaneously, the trial court's instruction to that effect did not permit the jury to return legally inconsistent verdicts.

V

The defendant next claims that the sentences for his convictions of attempted murder and attempted assault in the first degree violate the guarantee against double jeopardy in the fifth and fourteenth amendments to the constitution of the United States and article first, § 9, of the Connecticut constitution.[4] With respect to these unpreserved claims, he again seeks review under *Golding*. Again focusing on the condition most relevant in the circumstances; see *State* v. *Rose*, 41 Conn. App. 701, 706–707, 679 A.2d 197, cert. denied, 239 Conn. 906, 682 A.2d 104 (1996); we conclude that the third prong of *Golding* is not satisfied because a constitutional violation does not clearly exist.

As an initial matter, we reject the defendant's argument that article first, § 9, entitles him to greater protection against double jeopardy than does the federal constitution. This court, in *State* v. *Adams*, 38 Conn. App. 643, 654–56, 662 A.2d 1327, cert. denied, 235 Conn. 908, 665 A.2d 902 (1995), thoroughly examined this

[4] "Although the Connecticut constitution does not include a double jeopardy provision, the due process guarantee of article first, § 9, of our state constitution encompasses protection against double jeopardy." *State* v. *Nixon*, 231 Conn. 545, 550, 651 A.2d 1264 (1995), citing *Kohlfuss* v. *Warden*, 149 Conn. 692, 696, 183 A.2d 626, cert. denied, 371 U.S. 928, 83 S. Ct. 298, 9 L. Ed. 2d 235 (1962).

claim. We concluded that " '[o]ver the last fifty years, [the *Blockburger* rule] has consistently been applied by Connecticut courts in analyzing double jeopardy claims arising from multiple convictions and punishments imposed in a single trial. . . . Connecticut's citizens have no realistic expectation that they will have these double jeopardy claims scrutinized by a test that is more protective than the *Blockburger* test.' " (Citations omitted.) Id., 655–56, quoting *State* v. *Laws*, 37 Conn. App. 276, 294–95, 655 A.2d 1131 (1995); see also *State* v. *Gilchrist*, 24 Conn. App. 624, 629, 591 A.2d 131, cert. denied, 219 Conn. 905, 593 A.2d 131 (1991) (declining to extend same evidence test, which concerns successive prosecutions, to single prosecution cases). We decline, therefore, to review independently the defendant's claim under the state constitution.

" 'Double jeopardy analysis in the context of a single trial is a two-step process. First, the charges must arise out of the same act or transaction. Second, it must be determined whether the charged crimes are the same offense. . . . *State* v. *Greco*, [216 Conn. 282, 290–91, 579 A.2d 84 (1990)]. . . . Traditionally we have applied the *Blockburger* test to determine whether two statutes criminalize the same offense, thus placing a defendant prosecuted under both statutes in double jeopardy: [W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. *Blockburger* v. *United States*, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932). 'This test is a technical one and examines only the statutes, charging instruments, and bill of particulars as opposed to the evidence presented at trial. *State* v. *Lonergan*, [213 Conn. 74, 79, 566 A.2d 677 (1989)]." *State* v. *Nixon*, 231 Conn. 545, 550–51, 545 A.2d 1264 (1995). If, as the defendant was charged, there was any

element that the state was required to prove under one offense that was different from an element that the state was required to prove under the other offense, " 'the *Blockburger* test is satisfied, notwithstanding a substantial overlap in the proof offered to establish the crimes.' " *Brown* v. *Ohio*, 432 U.S. 161, 166, 97 S. Ct. 2221, 53 L. Ed. 2d 187 (1977), quoting *Iannelli* v. *United States*, 420 U.S. 770, 785 n.17, 95 S. Ct. 1284, 43 L. Ed. 2d 616 (1975).

In order to prove the defendant guilty of attempted murder, the state was obligated to establish that he engaged in intentional conduct constituting a substantial step toward intentionally causing the death of another person. In order to prove the defendant guilty of assault in the first degree, the state was obligated to establish that he engaged in intentional conduct constituting a substantial step toward intentionally causing serious physical injury to another person. See *State* v. *Fernandez*, 27 Conn. App. 73, 96, 604 A.2d 1308, cert. denied, 222 Copnn. 904, 606 A.2d 133 (1992). As we explained in part IV of this opinion, our Supreme Court has determined that the particular intents required to commit these crimes are not the same. Thus, a conviction for attempted murder requires proof that the defendant possessed the intent to cause another's death, while a conviction of attempted assault in the first degree requires proof that the defendant possessed the intent to cause serious physical injury. Each offense, therefore, requires proof of an element that the other does not. Consequently, the statutory violations charged are not the same for double jeopardy purposes, and there is no constitutional violation.[5]

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[5] "The *Blockburger* test is a rule of statutory construction, and because it serves as a means of discerning [legislative] purpose the rule should not be controlling where, for example, there is a clear indication of contrary legislative intent. . . ." (Citations omitted; internal quotation marks omitted.) *State* v. *Nixon*, supra, 231 Conn. 555. The defendant offers no evidence of contrary legislative intent.

VI

The defendant further asserts that there was insufficient evidence to sustain his conviction of attempted murder and attempted assault in the first degree. The defendant, however, fails to specify which element or elements of which crime he contends were not supported by sufficient evidence. The defendant merely maintains that "the perpetrator never said anything to the victims, there was no history of any ill will, there was no evidence of any physical injury to the victims, none of the bullets entered the passenger compartment, and there was no evidence of any 'planning' within the meaning of § 53a-49 . . . ." A fact finder may infer criminal intent from the presence of some of those factors, but the absence of those factors in the context of this case is irrelevant, the result of good fortune or both.[6] Nevertheless, because the factors cited by the defendant would pertain, in the appropriate case, to the issue of whether a defendant possessed the requisite intent to commit the crimes charged, we will review his claim on that basis.

In reviewing claims of evidentiary insufficiency, we first "construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the jury reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt. . . . Ordinarily, intent can only be inferred by circumstantial evidence; it may be and usually is inferred from the defendant's conduct. . . ." (Citations omitted; internal quotation marks omitted.) *State* v. *Diaz*, 237 Conn. 518, 541, 679 A.2d 902 (1996). "Intent is a question of fact, the determination of which should stand unless the

[6] The defendant's contention that no one was injured by the gunshots is particularly irrelevant where, as here, one is convicted of an inchoate offense.

conclusion drawn by the trier is an unreasonable one." (Internal quotation marks omitted.) *State* v. *Williams*, supra, 237 Conn. 757.

"A person is guilty of an attempt to commit a crime if, acting with the kind of mental state required for commission of the crime, he . . . intentionally does . . . anything which, under the circumstances as he believes them to be, is an act . . . constituting a substantial step in a course of conduct planned to culminate in his commission of the crime." General Statutes § 53a-49 (a). Thus, the state was required to prove beyond a reasonable doubt that the defendant took a substantial step toward intentionally causing the deaths of O'Connor and Mikolic; General Statutes § 53a-54a; and that the defendant took a substantial step toward intentionally causing them a serious physical injury. General Statutes § 53a-59 (a) (1). As we have discussed in part IV, one can possess the specific intent to cause a victim's death and the specific intent to cause a victim serious physical injury simultaneously. "It is axiomatic that a factfinder may infer an intent to cause serious physical injury from circumstantial evidence such as the type of weapon used, the manner in which it was used, the type of wound inflicted [, if any,] and the events leading up to and immediately following the incident." 1 B. Holden & J. Daly, Connecticut Evidence (1996 Sup.) § 66, citing *State* v. *Guess*, 39 Conn. App. 224, 240, 665 A.2d 126, cert. denied, 235 Conn. 924, 666 A.2d 1187 (1995); moreover, an intent to cause death may be inferred from such circumstantial evidence. 1 B. Holden & J. Daly, Connecticut Evidence (1988) § 66, citing *State* v. *Chace*, 199 Conn. 102, 105, 505 A.2d 712 (1986).

Mikolic and O'Connor each testified that the defendant pointed the gun directly at them. Mikolic testified that the defendant fired five shots at them. Hammel testified that one bullet penetrated the driver's side

door, another was deflected by the hood near the windshield and a third entered the front fender near the driver's door. He further testified that the bullets were fired from a high caliber handgun. We conclude, therefore, that the evidence presented at trial and the inferences that reasonably could be drawn from that evidence were sufficient to have allowed the jury to conclude beyond a reasonable doubt that the defendant possessed the requisite intent to commit the four charged crimes.

VII

Finally, the defendant argues that the trial court improperly failed to instruct the jury on an element of criminal attempt. Specifically, he claims that the trial court's denial of his request to instruct the jury concerning the definition of "planned," as that term is found in § 53a-49 (a) (2),[7] violated his right to due process. In his request to charge, the defendant sought instructions defining "planned" as entailing a "method of design or act, procedure or arrangement for accomplishment of a particular act or objective."

A jury charge must be considered from the standpoint of its effect on the jury in guiding it to a proper verdict. *State* v. *Delgado*, 13 Conn. App. 139, 145, 535 A.2d 371 (1987). "In a criminal proceeding, there is no duty to charge the jury in the identical language requested as long as the charge is accurate, adequate and its substance properly includes material portions of the defendant's request. *State* v. *Suarez*, 23 Conn. App. 705, 710, 584 A.2d 1194 (1991)." *State* v. *Pettway*, 39 Conn. App. 63, 75–76, 664 A.2d 1125, cert. denied, 235 Conn.

[7] General Statutes § 53a-49 (a) provides in pertinent part: "A person is guilty of an attempt to commit a crime if, acting with the kind of mental state required for commission of the crime, he . . . (2) intentionally does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime."

921, 665 A.2d 908 (1995). The trial court's "responsibility is performed when it gives instructions to the jury in a manner calculated to give them a clear understanding of the issues presented for their consideration, under the offenses charged and upon the evidence, and when its instructions are suited to their guidance in the determination of those issues." *State* v. *Delgado*, supra, 13 Conn. App. 145.

First, § 53a-49 (a) (2) requires an accused to have undertaken a substantial step toward committing the intended crime. This standard focuses on what act remains to be done to commit the intended crime and not what acts have been done. *State* v. *Hanks*, 39 Conn. App. 333, 341, 665 A.2d 102, cert. denied, 235 Conn. 926, 666 A.2d 1187 (1995). The defendant's request to charge concerning planning, however, attempts to shift the focus to what acts have been done and, therefore, does not accurately reflect Connecticut law.

Second, the trial court's charge, while not explicitly defining the term planned, fully explicated the elements of criminal attempt and provided guidance for a proper verdict under Connecticut law. On several occasions, the trial court instructed the jury that the state must prove that the defendant engaged in conduct that was a substantial step in a course of conduct that he planned to end in his commission of either of the intended crimes. It further instructed that preparation to commit a crime, on its own, is not necessarily sufficient, but that some preparation might be sufficient. In regards to planning, the court stated that "in order for the criminal course of conduct of the defendant to be planned, it is not necessary for the state to prove when he formed the plan or that he had it in mind for any particular period of time." The trial court's instructions, therefore, did not violate the defendant's right to due process.

The judgment is affirmed.

In this opinion the other judges concurred.

Brian T. Henebry and *Barbara J. Sheedy*, in support of the petition.

Joel M. Ellis, in opposition.

Decided March 27, 1997

STATE OF CONNECTICUT *v.* BENJAMIN CAMPFIELD

The defendant's petition for certification for appeal from the Appellate Court, 44 Conn. App. 6 (AC 11386), is denied.

Erskine D. McIntosh, in support of the petition.

James D. Ralls, assistant state's attorney, in opposition.

Decided March 27, 1997

TRIAL COURT RULING DENYING MOTION TO SUPPRESS IDENTIFICATION TESTIMONY DATED MARCH 16, 1992

THE COURT: All right, last night we concluded a motion to suppress filed by the defendant to suppress the identification of the defendant. Of course in the motion to suppress, the defendant has the burden of proof and the court has the additional burden of being a fact finder. And as a fact finder in any court proceeding, the issues of credibility are determined by the court when it acts as a fact finder. For the defendant to succeed in a motion to suppress, the defendant must prove number one, that the identification procedures were unnecessarily suggestive, and that secondly, the resulting identification was not reliable in the totality of the surrounding circumstances. If the identification procedures are not impermissibly or unnecessarily suggestive, the inquiry is then ended. In this case, a shooting occurred in the town of Trumbull and subsequently, the Bridgeport police had detained the defendant at or near the intersection of Stratford Avenue and Hollister Avenue in the city of Bridgeport. And the detention was for the purpose of allowing the victims the opportunity -- the victims of the shooting, to be driven to Bridgeport at that intersection to view the defendant. The identification was made approximately two hours after the shooting. Now of course, on the scene or on the street confrontations between the victim and the suspect are suspect

from time to time. Circumstances may justify prompt viewing of the defendant by the victim, because such on the scene confrontations are reasonably likely to be accurate and will justify the quick release of an innocent person if there's no positive identification. Such confrontations are inherently and significantly suggestive because they convey the message that the police have reason to believe that the suspect is guilty. The question is whether the suggestive circumstances were impermissible or unnecessary. In this case, the victims were brought to Bridgeport at the intersection of Stratford Avenue and Hollister Avenue and before the only police person in the car, who drove the victims to the intersection, before that police person highlighted the location of the defendant, the victims, both of them, identified the defendant who was then standing in a group or a crowd of people. The identification was confirmed after spotlights and headlights additionally illuminated the area. Here in this case it was important to eliminate promptly, any innocent parties so as to continue the investigation with a minimum of delay. While the identification procedures may have involved some elements of suggestiveness, the procedure was justified to avoid delay and to free an innocent person and to continue the investigation. The identification of the defendant was made when he was located near a pole at the intersection of Stratford Avenue and Hollister Avenue, where there were at least two uniformed patrolmen, but also, an

undisclosed number of bystanders in this ghetto area of the city of Bridgeport. The defendant was not handcuffed and he was not surrounded by the police when he was located at that pole. The area was artificially illuminated, and as a matter of fact, the victims identified him even before the spotlight and headlights were directed at the defendant at the pole. The identification was confirmed positively when the defendant removed his hat. There was not evidence before me that the defendant was in custody before the identification was made. The defendant argues at the Bridgeport police headquarters whose lockup cells was only two or three miles away. The Trumbull Police Department also contained lockup cells. However, there is absolutely no credible evidence before me to indicate that either of the lockup cells in either police department had contained any black men, black males who resembled the defendant. Clearly, it would have taken considerable time to prepare an appropriate lineup, and the defendant who was not then in custody, would have to wait for such a period of time that would have subjected the defendant to a considerable delay. The confrontation took place when the victims' recollection was fresh, when the need of the police to either establish probable cause or to dispel their suspicion was acute and when a probable cause was established, the necessity of searching the defendant or his automobile or making further investigation of his automobile was strong. I find and conclude that the

identification procedure was not unnecessarily suggestive. But even if it were impermissibly and or unnecessarily suggestive as to give rise to a very substantial likelihood of irreparable mis-identification, the court will then examine the factors effecting the likelihood of mis-identification. The factors that the court should consider in evaluating the likelihood of mis-identification include the opportunity of the identifying witness or witnesses to view the perpetrator at the time of the crime. There was credible evidence before me that the victims, both of them, Miss O'Connor and Mr. Mikolic had the artificial light from their headlights shining on the defendant's car and that they were able to view him. The period of time that they viewed him was a few seconds and they testified, and I believe them, that they recall and were able to identify the defendant. Certainly, they paid a great deal of attention to the defendant. They were concerned that the vehicle had been earlier tailgating them and they proceeded to the area to see just who it was and what the need of that person may have been. The other factor the court considered was not only the degree of attention, but also the accuracy of the witnesses' prior description of the perpetrator. There's no evidence before me that there was any inconsistent description given to the police with the description that was given by the victims at the scene. Now I am also impressed with the level of certainty exhibited by the victims at the

confrontation. There is no doubt the defendant was the person who fired the shots at them in Trumbull. The other factor the court considers is the length of time between the shooting and the confrontation and at most, that was a two hour period of time. So the court finds that all of the facts, by the credible evidence, the factors have been satisfied and accordingly, the defendant's motion to suppress the identification is denied. The court also finds there was probable cause after the identification was made to arrest the defendant and the motion to dismiss is denied. We will now proceed with the testimony.

SUPPRESSION HEARING EXCERPTS

TRACEY O'CONNOR

Transcript Page 2

Q: So as you turned -- made a right turn -- were you operating the vehicle?

A: No, I was not. I was the passenger.

Q: And who was the operator of the vehicle?

A: Ivan Mikolic.

Q: And what kind of vehicle was it that he was operating.

A: A red Cavalier.

Transcript Pages 4-5

Q: Did you see the car yourself?

A: I turned around and saw the car.

Q: Did you turn around before he turned into the driveway and stopped?

A: Yes.

Q: And what did you see when you turned around?

A: Bright lights and that he was tailgating us.

Q: Were the lights steady?

A: He flashed them.

Q: Constantly or occasionally?

A: Occasionally.

* * *

Q: What did the other vehicle do?

A: The other car passed by us quickly and then slowed down and turned around into October Lane.

Transcript Pages 7-8

Q: And that's in a generally, when you go from Main Street to Madison Avenue, going in a westerly direction. Isn't that right?

A: I wouldn't know. But if you say so.

Q: Do you know where the sun sets in the evening?

A. I guess in the west.

* * *

Q: Is there a curve in the road at the intersection just prior to reaching that intersection?

A: A small curve.

Transcript Page 9

Q: You were sitting in the passenger side and what side of the car was

Mr. Mikolic sitting? The driver's -

A: The driver's side.

Q: Was that to your left?

A: Yes.

Q: As you were stopped in the drive-way?

A: Yes.

Q: And was this intersection of October Lane where the vehicle stopped, was that to your left?

A: Yes.

Q: So was it therefore not true that Mr. Mikolic was sitting between you and the intersection where this incident occurred?

A: Yes.

Transcript Page 12

Q: And was the light shining down from the pole on October Lane?

A: Yes.

Q: Then your -- you were testifying that your vehicle backed up out of the driveway?

A: Correct.

Q: Is that correct? And then you proceeded 20 or 25 feet more

toward the intersection, correct?

A: Correct.

Q: Then what happened?

A: We pulled up to the car at an angle so that we could see the driver--

Transcript Pages 15-16

Q: And pulling into October Lane, did you pull into October Lane in front of that vehicle or did you pull into October Lane behind the vehicle?

A: In front.

Q: In front of it?

A: At an angle in front.

Q: And what did you see?

A: The driver.

Q: And were you stopped?

A: Yes.

Q: And how long were you stopped?

A: A few seconds.

* * *

Q: Between you and the driver then, you were closest to the other car. Is that correct?

A: No, the driver was closest.

Transcript Page 17

Q: And if you had to -- how far from the other vehicle did your vehicle stop?

A: From where you are to where I am.

Q: You were originally about 20 to 25 feet away and it looks like I'm about half way or maybe a little less. So you had stopped 10 to 15 feet from the other vehicle?

A: If that's 10 to 15 feet, yes.

Transcript Page 18

Q: Four feet, maybe, from the other vehicle. That was the front bumper of your vehicle?

A: To the other vehicle.

Q: And then you were sitting in the passenger's compartment of the vehicle, so you were about 10, 15 feet away from it? And then the driver of the other vehicle or any occupants, the passenger part of the other vehicle, of course would be further away from you than the front of the -- the front part of the vehicle, correct?

A: Correct.

Q: And how far away from you was the passenger or driver's compartment

of the other vehicle?

A: Of the other vehicle?

Q: Pardon?

A: Of the other vehicle you're saying?

Q: Yes?

A: From where I am to you.

OFFICER HAMILTON

Transcript Page 145

Q: And both of the suspects told you that the car from which the shots had come had been an expensive looking car like a Jaguar. Correct?

A: Correct.

TRACEY O'CONNOR

Transcript Pages 19-20

Q: I mean the front hood of the other vehicle and so forth would be about another 10, 15 feet?

A: the side.

Q: Did you notice as you came up to the other vehicle and stopped, any identification of the other vehicle? Could you tell what color it was?

A: At that point, yes.

Q: And what color was it?

A: The car was brown.

Q: Could you see any license plate on the front part of the car?

A: No, I could not.

Q: Could you see -- was the light on -- any interior lights on in the other vehicle?

A: No.

Q: And the head lights of this other vehicle were on high -- high beams, correct?

A: I couldn't see on his car how his lights were. If they were on high or low.

Transcript Page 24

Q: And what did you see?

A: A black man around age 40 or 50 with glasses on.

Transcript Pages 25-26

Q: And then the occupant in the other -- in the other vehicle was how many -- well withdraw that. What else did you see about the occupant of the other vehicle? Did you see what he was wearing?

A: No, I didn't notice.

Q: As to whether he was wearing a hat or whether he was not wearing a hat?

A: No hat.

Q: And you say he was wearing glasses?

A: Correct.

Q: Could you see a glint of the light off the glasses?

A: I don't remember.

Q: Could you see his eyes behind the glasses?

A: I just saw the glasses.

Q: Was he thin or was he of normal build or heavy build?

A: He was -- I would say he was not very heavy, but heavier than average.

Q: What happened?

A: We pulled up to the car to the point of being able to decipher who was in the car because not many people drive behind you flashing their beams, pass you quickly and turn around. We pulled up to the car for the purpose to identify who the man was so we got a clear view of who he was. A few seconds passed. We

both acknowledged each other, the driver of the other car. And --

Q: Now when you say, "acknowledged each other?"

A: We both looked at each other.

Q: Did you talk?

A: No.

Q: By acknowledge, you mean looked at each other?

A: Correct.

Q: And for how long were you stopped while you were looking at him?

A: A few seconds.

Q: Then what happened?

A: Two fires. Two shots went off. I saw two yellow flashes and then Ivan pushed me down.

Transcript Page 27

Q: The yellow flashes were moving towards you?

A: They were gun shots.

Q: Pardon?

A: They were gun shots.

Q: The gun -- you saw a yellow flash and the yellow flash was moving towards you?

A: I saw the flash from the gun.

Q: Was the flash moving or was it stationery?

A: At that point I was so scared I couldn't tell you.

Q: Then what happened?

A: Then Ivan pushed me down.

Trancript Page 29

Q: Was there anything else about him? Could you see his build?

A: I could see his upper portion.

Q: From what portion is high up?

A: Probably his chest.

Q: And you can't see what he was wearing?

A: I didn't notice what he was wearing. I was -- I was noticing who he was. I was noticing his face. I wasn't noticing his clothes.

Q: Had you ever seen this individual before?

A: Never.

Trancript Page 30

Q: Well your vehicle was moving, correct? And there had come a

time when you got out of the car?

A: When we -- we drove the car as -- as far as it could go. Then we got out of the car and ran.

Transcript Page 31

Q: And then I assume you called the Trumbull Police Department, correct?

A: Correct.

Q: And who brought you to Bridgeport?

A: One of the officers. A female officer. I'm not sure of her name.

Q: She was the only operator of the vehicle?

A: She was.

Q: And where were you sitting in the vehicle?

A: Ivan and I were in the back seat.

Q: What did she tell you on the way to Bridgeport about why you were going to Bridgeport?

A: She said they had a suspect. That they had. She said they had a suspect, basically.

Transcript Pages 32-33

Q: Would it be more than an hour after the incident occurred?

A: More than an hour.

Q: What time according to your recollection did the incident occur?

A: The incident in which I was shot or the incident in Bridgeport?

Q: Were -- were you shot -- pardon?

A: The incident in which I was being shot at or the incident in Bridgeport, are you asking me?

Q: The incident of October Lane when someone shot at you?

A: A little after 12:00.

Q: All right. And what happened after you got to Bridgeport?

A: When we got to Bridgeport, Ivan and I were in the back seat of the police car. The first thing we noticed when we were driving down -- I'm not sure of the name of the street -- when we were driving down the street, on the left, I noticed the BMW and I said -- Ivan and I both said, "there's the car." That's the first thing we identified.

Q: You saw a brown BMW there?

A: We saw a blue BMW which was the exact same make and model of the BMW, but in the light it appeared to be blue.

Q: And the BMW you saw on October Lane was brown, BMW. Correct?

A: Correct.

Q: And the BMW you saw in Bridgeport was blue, correct?

A: Correct.

Transcript Page 34

Q: So you are certain -- are you certain that this is the location that you were --

A: He was next to the pole.

Transcript Pages 35-36

Q: And where was the suspect?

A: He was leaning against the pole.

Q: And was -- was he standing or sitting?

A: Standing.

Q: And leaning against the pole?

A: He was standing next to the pole. He had his arm on the pole.

Q: And was there any police officers there?

A: There were police officers near our car. There were police officers near him.

Q: All right. Was there -- and were there police officers on each side of him?

A: I don't know.

Q: He was -- how many police officers were around the suspect?

A: I don't know.

Q: More than one?

A: I don't know.

Q: "Officers" means more than one. Were there more than two?

A: I don't know how many there were.

Transcript Pages 36-37

Q: And you were told that he was a suspect, correct?

A: I was told that he was the man that was apprehended that fit the ID we had given them and the car we had given them.

Q: And you were told that he was a suspect and that he fit your ID by the police woman or the police officers told you that, correct, before you got to the scene?

A: She let -- we identified him before she -- she did not say to us anything. We said, "that's the man."

Q: You were told that you were going to Bridgeport to view a suspect? I believe you testified to that, correct?

A: Obviously.

Q: And when you got there, they said, "here's the suspect," correct?

A: We got there, she shined the light on him.

Q: What light did she shine on him?

A: The light inside the police car. That one they have. She put it on...

Transcript Page 38

Q: You -- they-- you were -- you were talking to them and they were talking to you?

A: Yeah.

Q: And what were you talking about?

A: There -- one of the Bridgeport police officers, Bruce Belko, I knew from where I work, so I was talking to him about where I work.

Q: And then-- and then what happened?

A: And then the female officer -- all the other officers got away from the car and the female officer pulled up. She had her light shining on the suspect.

Q: You pulled closer to the intersection?

A: Yes, we pulled closer to the pole and the man and we said, "that's him." And he had a hat on at the time and Ivan requested that the man took the hat off -- would take the hat off. He took the hat off and he said, "yes."

Transcript Page 39

Q: And you weren't shown anybody else?

A: No.

Q: And he was surrounded or there were police officers around him at that time, correct, and the only light on him was the light that came from either the street or from the light on the police car that you had been in, correct?

A: Correct.

Transcript Page 41

Q: An individual, since April of 1991 -- withdraw that. You were not shown any other individuals as possible suspects for you to look at before. This was the only individual you were shown - correct?

A: Correct.

Transcript Page 42

Q: Do you know whether or not there were any other black males in that neighborhood? Did you see any others?

A: I didn't notice anyone.

Transcript Page 45

Q: There was testimony about the build of the individual, what he was wearing and -- and you indicated he had glasses. You looked at his face. Isn't that a fair statement.

A: I -- I guess I looked.

Transcript Page 47

Q: Q: Now during that time that you were aware that you had to make an identification of the individual, and before you got to the location on state's Exhibit -- defendant's Exhibit "3," before you got to that location and before you saw the car, did the police officers suggest to you any -- in any way that they had the individual that shot at your car? Did they -- did they in any way suggest that they definitely -- that they had that exact person?

A: No, they said they had a suspect.

Transcript Page 49

Q: Did the police officer indicate where they were going at that point once they --

A: She said that we were going to drive up wherever they had the suspect and she would shine the light on him -- on the suspect and I asked her if he could see us and she said, "no, he won't be able to see you, but you'll be able to identify him."

Transcript Page 53

Q: And how did you know that?

A: Because of the distinctive head-lights that they have.

Q: What are -- what's the distinction about the BMW headlights?

A: They have four round headlights.

* * *

Q: Could you see any license plate on the other vehicle?

A: No.

IVAN MIKOLIC

Transcript Page 67.

Q: How far away from him were -- from his face were you when you stopped?

A: A few feet.

Q: Well how many feet?

A: About 12 feet.

* * *

Q: And was he wearing a tie or a shirt, do you know?

A: I don't know.

Q: Was he wearing a jacket?

A: I don't know.

Transcript Page 68.

Q: And what did you notice about his face outside of it was a dark colored face?

A: He had a slightly receding hair-line. He had glasses on.

Q: Um-humm. And anything else about him?

A: He was an older gentleman, a little heavy. I saw him.

* * *

Q: How long did you look at him? Did you have an opportunity to look at him?

A: Yes.

Q: How long? For how long a time?

A: About four seconds.

Q: Did you wind the window down of your -- on your driver's side?

A: No.

Q: So you didn't attempt to talk to him?

A: No.

Transcript Page 70

Q: Was it in his hand during the first four seconds that you looked at him?

A: I don't know.

Q: And you saw the gun fire?

A: Yes.

Q: And how do you know the gun was fired? Did you see a flash?

A: I saw the flash.

Q: Was any part of your car struck?

A: Yes.

Q: Were -- were you struck?

A: No.

Q: Was your -- was the passenger in your car struck?

A: No.

Q: How many shots were fired?

A: Five.

Transcript Page 87.

Q: And were there any other black males there that you were asked to identify or shown as possible suspects?

A: No.

OFFICER HAMILTON:

Transcript Pages 139 - 140.

A: I told them that we were going to be enroute to Bridgeport to attempt to make an identification.

Q: And did you do that? Did you take them to Bridgeport?

A: Yes.

* * *

Q: And what location was that?

A: The intersection of Hollister Street and Stratford Avenue.

Q: Did you have any discussions with them concerning the individual that was a suspect?

A: Just that we were -- the reason we were going down there was to see if they could make an identification of the suspect. And most of the other discussion I may have had with them was they were talking about just how frightening the incident had been and that kind of thing. Just generalities.

Transcript Pages 144-45.

Q: And what time, if you remember, was it when you left the victims, Tracy O'Connor's house to go to Bridgeport?

A: Approximately 1:30.

Q: And what do you recall arriving at the scene, that being Stratford and Hollister when the identification was made by the victims?

A: Approximately 2:10.

Q: And what was the purpose of going back to headquarters?

A: To complete statements by the victims.

Transcript Pages 145-46.

Q: And both of the suspects told you that the car from which the shots had come had been an expensive looking car like a Jaguar. Correct?

A: Correct.

Q: And in fact, while you were on Stonehouse Road, a BMW passed by. Correct?

A: At the corner of Stonehouse and Madison Avenue, yes.

Q: And the BMW that you stopped had Connecticut license plates, correct?

A: Correct.

Q: And it was a dark color BMW and its occupant was a lone male, the vehicle that you stopped at the scene of the crime. Correct?

A: I was not at the scene of the crime. I was a little, you know, further east, but in the area.

Q: Okay. Other than that, was it a dark colored BMW that you stopped?

A: Yes.

Transcript Pages 147 - 148.

Q: The victims never told you. Headquarters told you that the vehicle -- the suspect vehicle had Georgia plates --

A: Correct.

Q: -- correct? The victims never told you that the suspect vehicle had Georgia plates?

A: Correct.

Q: They didn't tell you anything about the plates. Correct?

A: Correct, correct.

Transcript Pages 154-55.

Q: They were standing right next to him though, weren't they?

A: In the area.

Q: And how many officers were standing there?

A: Oh, I would -- I couldn't tell you. I don't know. You know, give you an exact number.

Q: Give me an approximation?

A: Maybe two, four.

Q: And they were wearing uniforms?

A: Yes.

Q: He was the only one that wasn't wearing a uniform. Correct?

A: I recall there being other people on the like sidewalk area, but --

Q: Observers in the street?

A: Yes.

Q: But in the glare of your headlights, there was just this defendant in this case and two or four police officers --

A: And the general area was --

Q: -- standing around?

A: -- was lit up by my headlights.

Q: And there was him, and then two to four police officers wearing uniforms. Correct?

A: Um-humm.

Transcript Page 156.

Q: And those were police officers wearing uniforms. Correct?

A: Yes.

Q: And he wasn't wearing a police uniform.

A: Correct.

Transcript Page 157

Q: No. So the only -- and in the glare of your headlights, 25 feet away, the only person who wasn't a police officer was the defendant in this case, Mr. Campfield. Correct? Except for the people standing on the side.

A: Yeah. The --

Transcript Page 158-159

Q: Now none of these victims were wounded or shot. They weren't injured in any way, correct?

A: No.

Q: They didn't have to get any medical attention at all. Correct? They were upset but they weren't physically hurt, correct?

A: Not to my knowledge, no.

Q: So there was no medical emergency at the -- at the time of this investigation, correct?

A: No.

Q: And Mr. Campfield was in custody, correct?

A: He wasn't in -- in custody as far as being handcuffed or anything.

Q: But his freedom was restricted. He couldn't go where he wanted. He had to stand there, correct?

* * *

A: I don't know. I was -- I was just told to bring the victims to that scene.

Transcript Page 159-60.

Q: There's no reason why. If there is, tell us why Mr. Campfield couldn't have been taken to Bridgeport headquarters or Trumbull police headquarters and put in a lineup and have these victims --

A: I -- I don't know. I couldn't -- I wasn't making that decision.

Q: But there was no medical reason for it. The victims were not injured, correct?

A: Correct, the victims were not injured.

Q: Mr. Campfield had no injuries, right?

A: Not to my knowledge.

Q: No physical reason why either the victims or the suspect couldn't have been put in a lineup, so far as you know. No physical reason, correct?

A: No, no physical reason.

Q: Mr. Campfield lives in Trumbull, correct?

A: Yes. Or apparently. I -- I'm -- yeah, he has an address in Trumbull, I understand.

A: From what I understand, yeah, he has an address in Trumbull.

Q: There's no doubt that he lives there? That he's got a house there?

A: Yes.

* * *

Q: But it wasn't done, was it? There was never - there was never any lineup?

A: No, no, he was not transported to headquarters for a lineup.

Transcript Page 163

Q: Were very close. Whereas your car was about - your police car was,

did you say 20, 25 feet?

A: Approximately 25 feet.